

EVIDENCE — EXPERT TESTIMONY — opinion based on study/experience not subject to *Frye* test — Revised 3/2010

Not every expert's testimony is subject to the *Frye* test. "Although compliance with *Frye* is necessary when the scientist reaches a conclusion by applying a scientific theory of process based on the work or discovery of others, under Rule 702 and 703 experts may testify concerning their own experimentation, observation, and opinions based on their own work without first showing general acceptance." *State v. Hummert*, 188 Ariz. 119, 127, 933 P.2d 1187, 1195 (1997); see also *State v. Roscoe*, 145 Ariz. 212, 220, 700 P.2d 1312, 1320 (1984). Therefore, experts may testify to the results of their own experiments before any consensus has been reached within the expert's particular field. *Id.* Differences of opinion within the expert's professional community go to the weight of evidence rather than the admissibility of the testimony. *Barefoot v. Estelle*, 463 U.S. 880, 902 (1983), *overruled in part on other grounds by Lindh v. Murphy*, 521 U.S. 320 (1997).

An expert may give an opinion based on either actual experience or careful study of a subject. In *State v. Murray*, 184 Ariz. 9, 906 P.2d 542 (1995), defendants were convicted based, in part, on their footprints having been identified at the murder scene. The question was whether the detective was qualified as an expert on footprint comparisons. The detective had previously qualified in both federal and state courts as an expert, had experience and training in shoe and boot identification, and had made determinations of matches on hundreds of occasions. He had solid qualifications and vast experience in tracking in criminal investigations, tracking livestock, military training in the examination of enemy trails, hunting, and trapping. In addition, he had received training from an experienced officer and had himself taught numerous classes in

tracking and footprint identification. He had also read articles on the subject. *Id.* at 29, 906 P.2d at 562. Under Rule 702, the court held that the detective's experience qualified him as an expert, citing *State v. Dixon*, 153 Ariz. 155, 735 P.2d 765 (1987): "A witness must indicate that his training and experience qualify him to render enlightened opinions and draw sophisticated conclusions from the particular type of evidence available." See also *State v. Hughes*, 189 Ariz. 62, 72, 938 P.2d 457, 467 (1997). Shoe print analysis is an appropriate subject of expert testimony because "[s]hoe print comparisons are hardly ordinary and are quite beyond common experience." *State v. Runningeagle*, 176 Ariz. 59, 69, 859 P.2d 169, 179 (1993). However, the *Frye* analysis is not applicable to footprints. *Murray*, 184 Ariz. at 29, 906 P.2d at 562.